IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.240 OF 2003

Vasant Dattoba Bhosale & Ors. .. Appellants.
Vs.
Nanasaheb Krishnaji Patil .. Respondent.

Mr.A.V.Anturkar for the appellants.
Mr.M.L.Patil for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 13TH FEBRUARY, 2007

P.C.:

. Heard learned counsel for the parties.

2. This appeal is directed against the findings of fact recorded by the courts below by which a suit filed by the respondent-plaintiff stands decreed. The suit was filed for possession and damages. Mr.Anturkar, learned counsel for the appellants raised the only contention that even in case of unregistered lease, if the factum of lease is admitted then such lease has to be terminated by notice under section 106 of the Transfer of Property Act, 1882. In support of this submission he placed reliance upon judgment of the Supreme Court in **Shri Janki Devi Bhagat Trust Vs. Ram Swarup Jain (Dead) by LRs. (1995) 5 Supreme Court Cases 314**. In the present case the lease was executed on 8.11.1988. Admittedly, it was not registered and, therefore, the court below held it to be invalid and

as a consequence thereof rejected all the contentions raised by the Appellants. I perused the judgments of the courts below as also the judgment relied upon by Mr.Anturkar in **Shri Janki Devi's** (supra) case. It is true that in this case the Supreme Court has observed that though the unregistered lease could not be looked at but factum of lease cannot be disputed. I perused section 106 of the Transfer of Property Act as also section 107. The observations made by the Supreme Court in **Shri Janki Devi's** (supra) and in particular paragraph 4 thereof are more relevant. The Supreme Court has observed that under section 107 of the Transfer of Property Act a lease of immovable property from year to year or for any term exceeding one year can be made only by a registered instrument. Any lease of this kind would be void unless it is created by a registered instrument. After making this observation the Supreme Court considered the observation of the High Court which fell for its consideration that the lease was not for a term exceeding one year and so was not compulsorily registerable under the first part of section 107. It was further observed that since the lease was for a manufacturing purpose, six months notice to quit was required under section 106 and in its absence, termination was not valid. This observation of the High Court was held to be fallicious. It is clear

from the observation made by the Supreme Court that it was dealing with a case where the term of lease, admittedly, was not exceeding one year which is not the case in the present appeal. In the present case it cannot be overlooked that the lease was admittedly for nine years and, therefore, the judgment relied upon by Mr.Anturkar in support of his contention is of no avail to the appellants. I find absolutely no reason to interfere with the findings of fact recorded by the courts below and in my opinion there is sufficient material on record to sustain those findings. In the circumstances the appeal stands dismissed.

3. At this stage Mr.Anturkar seeks three months time to vacate the suit premises. Mr.Patil, learned counsel for the respondents fairly stated that he has no objection for granting time to vacate the suit premises as prayed for subject to the appellants filing of an usual undertaking. In view of the submissions I pass the following order:

. The appellants are given three months time to vacate the suit premises subject to filing of an usual undertaking within four weeks from today failing which it will be open for the respondent-plaintiff to execute the decree.

(D.B.Bhosale, J.)